

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THE 21ST DAY OF SEPTEMBER 1998

BEFORE:

THE HON'BLE MR.JUSTICE H.RANGAVITTALACHAR

H.R.R.P.NO.1327/1995

1. Smt.Yellamma Bai
w/o late P.Devendrappa,
72 years.

2. Sri D.Parashuram,
s/o late P.Devendrappa,
52 years.

3. Sri D.Krishna,
s/o late P.Davendrappa,
50 years.

4. Sri D.Basavaraj,
s/o late P.Davendrappa,
35 years.

5. Sri D.Purumeshwar,
s/o late Devendrappa,
30 years.

6. Sri D.Ravi,
s/o late Devendrappa,
35 years.

7. Miss Parvathi,
d/o late Devendrappa,
27 years.

All r/o No.104,
Sri Renuka Nivas, B.S.A.
Road, Bangalore.

Petitioners

(By M/s Shahedulla Khan)

-vs-

Sri Pavithran,
s/o P.K.Narayan,
40 years, Vijaya Stores,

Sri Renuka Building,
Nagawara Road, Venkateshpura,
Bangalore.

Respondent

(*Shri A. Gunashekharan Adv. for Respondent*)

This revision petition is filed under Section 50(1) of the Karnataka Rent Control Act against the order dated 23.6.1995, passed in HRC No.10444/91 on the file of the Court of the VI Additional Judge, Court of Small Causes, Bangalore.

This revision petition coming on for hearing this day, the court made the following:

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ORDER

Petitioners herein had filed an eviction petition against the respondent on the file of the learned Judge of Small Causes, Bangalore on the ground that all the petitioners are co-owners of the schedule property which is a shop and other properties situate at Nagavara Main Road, Bangalore that the seventh petitioner one Miss Parvathy, a spinister who has passed the age of marriage because of some disability wants to start a tailing business in the schedule shop; She has undergone training in tailoring; Besides there is incompatibility among the family members, therefore she wants to live in peace. This petition was resisted by the tenant-respondent denying the requirement as neither reasonable nor bonafide.

The learned Judge of Small Causes, Bangalore enquired the eviction petition. Before the learned Judge the said Parvathy for whose benefit the eviction was sought examined herself as PW.1 in support of her case and produced certain documents. Similarly respondent examined himself as RW.1 in support of the case and produced certain documents. During the trial it appears that a Commissioner was appointed who has inspected the the shop and has stated about the measurement and availability of an alternative accommodation to the

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petitioner. The learned Judge in appreciation of the evidence on record though did not disbelieve the case of the petitioner dismissed the eviction petition solely on the ground that subsequent to the filing of the eviction petition two premises fell vacant that is:

1. One shop premises in the upstairs of premises bearing No.1179 situate half a furlong away from the petitioners premises; and

2. That the petitioner instead of occupying the adjacent shop premises which ^{also} fell vacant has relet it to other tenant.

Therefore the ^{Gonafides} if any, is taken away.

Aggrieved by the said order, this revision petition is filed.

The learned counsel appearing for the petitioners contended that the learned Judge has not properly read the evidence on record. According to him no premises fell vacant which was available for occupation. In so far as the upstairs shop bearing No.1179 is concerned, earlier tenant in occupation of it without their consent has sub-leased it to a Doctor who is in occupation of the premises. So also is the case regarding the adjacent shop to the schedule shop.

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By a reading of the evidence of PW.1 it is not possible to come to the conclusion one way or the other that a shop in the first floor of premises No.1179 really fell vacant and the petitioners after taking possession of the same had leased it to a Doctor, so also regarding the adjacent shop to the schedule shop; PW.1 in her evidence has stated as follows:

"First floor of premises No.1179 is a Doctor's shop. It is let out to a Doctor who is not our relative. I do not remember the name of the person who had occupied it earlier. Witness says that the said person has inducted the Doctor in possession later."

Later however she has stated:

"It is not true to suggest that after filing of this petition I have let out the first floor shop to the Doctor. My elder brother Parasuram has got a rent agreement in respect of the first floor premises in respect of the Doctor".

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Similarly in so far as the availability of the adjacent shop to the schedule premises is concerned, learned counsel for the petitioners submitted that the original tenant had sub-leased the same in favour of the present occupant without their consent, therefore petitioners had to file an eviction petition in HRC No.10561/94 under Section 21 (1) (f) of the Karnataka Rent Control Act in respect of the said premises, which eviction petition came to be allowed by an order of the court dated 4.3.1996. Since this is a subsequent event it should also be taken into consideration while deciding the eviction petition. The evidence in this regard is not clear as to come to one or the other conclusion. Since the availability of a suitable alternative premises is a factor to be taken into consideration while passing the eviction order, it is necessary that the parties be provided with an further opportunity in that regard. It is also submitted by the tenant that apart from the above one more shop has now fallen vacant suitable for occupation. Therefore the matter has to be remanded to the file of the learned Judge of small Causes, Bangalore, to enquire about the

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availability of alternative accommodation to the petitioner, if so whether the same satisfies the need stated by her after giving the parties such opportunity as they may choose to lead additional evidence in this behalf and decide the eviction petition. The learned Judge shall decide the matter expeditiously.

Revision petition allowed.

Sd/-
JUDGE

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